

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS**

**MARY THOMAS,**

Plaintiff,

**V.**

**BLUESTEM BRANDS, INC. d/b/a  
FINGERHUT,**

Defendant.

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**Civil Action No.:**

## JURY TRIAL DEMANDED

## COMPLAINT

MARY THOMAS (“Plaintiff”), by and through her attorneys, KIMMEL & SILVERMAN, P.C., alleges the following against BLUESTEM BRANDS, INC. d/b/a FINGERHUT (“Defendant”).

## INTRODUCTION

1. Plaintiff's Complaint is based on the Telephone Consumer Protection Act ("TCPA").

## JURISDICTION AND VENUE

2. Jurisdiction of this Court arises pursuant to 28 U.S.C. § 1331. See Mims v. Arrow Fin. Services, LLC, 132 S. Ct. 740, 747, 181 L. Ed. 2d 881 (2012).

3. Defendant conducts business in the State of Texas, therefore, personal jurisdiction is established.

1 4. Venue is proper pursuant to 28 U.S.C. § 1391(b)(2).

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3 **PARTIES**

4 5. Plaintiff is a natural person residing in Houston, Texas.

5 6. Plaintiff is a “person” as that term is defined by 47 U.S.C. § 153(39).

6 7. Defendant has its principal place of business located at 6509 Flying Cloud  
7 Drive, Eden Prairie, Minnesota 55344.

8 8. Defendant is a “person” as that term is defined by 47 U.S.C. § 153(39).

9 9. Defendant acted through their agents, employees, officers, members, directors,  
10 heirs, successors, assigns, principals, trustees, sureties, subrogees, representatives, and insurers.  
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13 **FACTUAL ALLEGATIONS**

14 10. Plaintiff has a cellular telephone number that she has had for over a year.

15 11. Plaintiff has only used this number as a cellular telephone number.

16 12. Beginning in or before January 2015, and continuing through March 2015,  
17 Defendant called Plaintiff on her cellular telephone on a repetitive and continuous basis.

18 13. When contacting Plaintiff on her cellular telephone, Defendant used an  
19 automatic telephone dialing system.

20 14. Defendant’s telephone calls were not made for “emergency purposes.”

21 15. In February 2015, Plaintiff revoked any consent previously given to Defendant  
22 to place telephone calls to her cellular telephone number.  
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1           16. On the occasions in which Plaintiff spoke to Defendant's representatives  
2 following revocation of consent, they would become hostile upon Plaintiff's request for them to  
3 cease further communication.

4           17. Defendant heard and acknowledged Plaintiff's revocation of consent and  
5 demand to stop calling her cellular telephone number.

6           18. Despite the above, Defendant called thereafter and sent several letters to  
7 Plaintiff.

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9                                   **DEFENDANT VIOLATED THE**  
10                                  **TELEPHONE CONSUMER PROTECTION ACT**

11           19. Plaintiff incorporates the forgoing paragraphs as though the same were set forth  
12 at length herein.

13           20. Defendant initiated multiple automated telephone calls to Plaintiff's cellular  
14 telephone using an automatic telephone dialing system.

15           21. Defendant's calls to Plaintiff were not made for emergency purposes.

16           22. Defendant's calls to Plaintiff were not made with Plaintiff's prior express  
17 consent as Plaintiff revoked consent.

18           23. Defendant's acts as described above were done with malicious, intentional,  
19 willful, reckless, wanton and negligent disregard for Plaintiff's rights under the law and with the  
20 purpose of harassing Plaintiff.

21           24. The acts and/or omissions of Defendant were done unfairly, unlawfully,  
22 intentionally, deceptively and fraudulently and absent bona fide error, lawful right, legal  
23 defense, legal justification or legal excuse.  
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